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October 4, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Re: AT&T Corp. and Alascom, Inc.; CC Docket No. 00-46

Dear Ms. Salas:

Transmitted herewith, on behalf of AT&T Corp. and Alascom, Inc., are an original and four copies of their Opposition of AT&T and Alascom to the *Ex Parte* Comments of the Regulatory Commission of Alaska in the above-referenced proceeding.

In the event that there are questions concerning this matter, please communicate with this office.

Very truly yours,

Charles R. Naftalin

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of the Petition of	)	
	)	
AT&T CORP. and ALASCOM, INC.	)	CC Docket No. 00-46
	)	
For Elimination of Conditions Imposed	)	
By the FCC on the AT&T-Alascom	)	
Relationship	)	

EX PARTE OR LATE FILED

OPPOSITION OF AT&T AND ALASCOM TO THE *EX PARTE* COMMENTS OF THE REGULATORY COMMISSION OF ALASKA

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October 4, 2001

TABLE OF CONTENTS

SUMMARY

In their petition, AT&T and Alascom requested elimination of the FCC's separate corporation, separate tariff and affiliate transaction obligations applied to Alascom. They requested reduced regulation of Alascom's Tariff FCC No. 11, the Common Carrier Service ("CCS") tariff, and offered to cap the rates at their current levels, during a two-year period and ultimately to eliminate that service. AT&T and Alascom also urged immediate repeal of the FCC's historical "Bush Policy" which is the only *de jure* interstate interexchange telecommunications facilities monopoly in the United States. Grant of the relief requested would allow AT&T to offer interstate telecommunications services in Alaska on the same basis as it does in all other states.

In this pleading, AT&T and Alascom oppose the *ex parte* comments of the Regulatory Commission of Alaska ("RCA") which maintains that reduction in the regulation of Alascom should not be granted because Alascom exercises "market power" in Alaska. The RCA is wrong because it ignores fundamental changes in the provision of telecommunications services in Alaska since the current regulatory model was formulated for Alascom years ago. Approximately 95 percent of all Alaskan access lines are open and subject to facilities-based competition (including ones in the Bush where other carriers have deployed facilities subject to broad waivers) and Alascom has asked for repeal of the "Bush Policy" which inhibits facilities-based entry

to the tiny remainder of access lines. Alascom's modest share of the market, the presence of substantial competition and competitors, and the statutory requirement of rate integration amply establish that the requested reduction in regulation should be authorized.

AT&T and Alascom have requested the authority to replace Alascom's CCS Tariff No. 11 with more efficient services and, after a two-year monitoring period, terminate it. Tariff No. 11 is the only remaining AT&T or Alascom interexchange service classified as "dominant," and the only remaining significant long-term domestic interexchange offering of either carrier under tariff. The record is clear that CCS is not a significant marketplace factor because AT&T itself represents 97 percent of the traffic carried under it, and the FCC and RCA already permit facilities-based competitive access to a substantial majority of Bush traffic. Obviously, long-term maintenance of this anachronistic tariff is unwarranted.

As proposed by AT&T and Alascom, and agreed to by the RCA and General Communication, Inc. ("GCI"), repeal of the Commission's Bush Policy would eliminate the only policy basis for the maintenance of Tariff No. 11. Because competitive entry in the Alaskan Bush would be on the same legal terms as entry in all other parts of the United States (including all of non-Bush Alaska), it would render the Bush service subject to the FCC's long-standing determinations that Alascom is non-dominant, that the Alaska service is part of the national telecommunications product market, and that

market conditions and required rate integration protect Alaskans from even the potential of unfair rate increases. These facts and determinations have been ignored entirely by the RCA.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of the Petition of	)	
	)	
AT&T CORP. and ALASCOM, INC.	)	CC Docket No. 00-46
	)	
For Elimination of Conditions Imposed By the FCC on the AT&T-Alascom Relationship	)	

OPPOSITION OF AT&T AND ALASCOM TO THE *EX PARTE* COMMENTS OF THE REGULATORY COMMISSION OF ALASKA

AT&T Corp. ("AT&T") and its wholly-owned subsidiary Alascom, Inc. ("Alascom") hereby submit this Opposition to the Regulatory Commission of Alaska ("RCA[1]") Comments dated February 9, 2001, which were submitted to the Federal Communications Commission ("Commission" or "FCC") on an *ex parte* basis in the above-captioned proceeding. As demonstrated below, the RCA's comments are unfounded and out of touch with the factual and legal realities of the Alaska telecommunications market. For these reasons, the Commission should delay no longer and promptly grant the AT&T and Alascom Petition for Elimination of Conditions ("Petition") which has languished since its submission on March 10, 2000, more than a year and a half ago.

[1] The Alaska Public Utilities Commission ("APUC") was transformed into the Regulatory Commission of Alaska ("RCA"). For purposes of clarity, we will refer to this body as the RCA, even when referring to its predecessor.

I. BACKGROUND

The Petition seeks narrow and specific regulatory relief which is solely within the jurisdiction of the FCC. Specifically, AT&T and Alascom requested elimination of the FCC's separate corporation, separate tariff and affiliate transaction obligations applied to Alascom, so as to allow AT&T to offer interstate telecommunications services in Alaska as it does in all other states. They requested reduced regulation of Alascom's Tariff FCC No. 11, the so-called Common Carrier Service ("CCS") tariff, and offered to cap the Tariff No. 11 rates at their current levels. As a necessary foundation for reduced regulation of Tariff No. 11 and capping of its rates, AT&T and Alascom also requested immediate repeal of the FCC's historical "Bush Policy," which is the last remaining *de jure* interstate interexchange telecommunications facilities monopoly in the United States. That repeal would end the only remaining basis for required provision of the Tariff No. 11 service and expose the approximately five percent of Alaska access lines restricted under the Bush Policy to the same pro-competitive regulatory environment as all other access lines, including the 95 percent of Alaska lines currently open to facilities-based entry. Even among the communities currently classified as "Bush" under Tariff No. 11, GCI now provides facilities-based competition in 56 of them, representing approximately 74% of all interstate traffic originating from satellite earth stations in the Bush and

63% of all satellite-served Bush intrastate-originating traffic. (Petition, p. 11)

Although they believe that the facts warrant immediate termination of Tariff No. 11, AT&T and Alascom urged a two-year monitoring period after capping of the CCS rates and repeal of the Bush Policy during which the Commission, the RCA and all interested parties could observe the Bush service, including traffic carried to and from the Bush, and AT&T's provision of services alternative to CCS. The effects on other carriers would be *de minimis* because currently AT&T itself is responsible for 97% of CCS traffic. AT&T and Alascom contemplated termination of Tariff No. 11 after a successful two-year period.

These modest steps would permit AT&T to integrate Alascom's operations into the same nationwide service structure AT&T uses in the other 49 states and pave the way for substantial benefits, including improved customer support in Alaska, expanded efficiencies, cost savings and improved opportunities for competition in Alaska, and between Alaska and the other states.

AT&T and Alascom demonstrated in the Petition that the Alaska telecommunications market has changed substantially in the several years since the Commission last examined it. Such change includes dramatic growth in competition and significant legal modifications, such as the passage of the Telecommunications Act of 1996.

The RCA's Comments are replete with fallacies, unsupported assertions or statements contrary to the record and to the Commission's long-standing determinations. AT&T and Alascom address them below.

II. THE RECORD IS CLEAR THAT ALASCOM DOES NOT EXERCISE MARKET POWER.

The RCA contends:

> We disagree with AT&T and Alascom that market conditions in Alaska are such that Alascom lacks market power and, therefore, reduced regulation is appropriate. Alascom has an economic incentive and market power to raise its carrier-to-carrier rates and private line rates for communications in areas where it has a facilities monopoly. (Comments, p. 2)

The RCA offers no traffic, economic or other factual support for its position but relies solely on a circular argument, *i.e.*, Alascom has a "facilities monopoly" for certain Bush earth stations so it must hold "market power" and Alascom has "market power" because it has a "facilities monopoly." (*See* Comments, p. 2, p. 2 note 3, p. 3, p. 4)

As shown below, these contentions cannot be a substitute for the record established in the Petition, the current state of telecommunications law and regulation, and the market analysis techniques developed by the Commission over the past twenty years. The FCC has made it clear that it will find that a carrier lacks market power even if competition is not equally robust in all areas or in all services. (*See* pp. 13-15, *infra.*) Contrary to the FCC's view, the RCA would require that Alascom show that every single location it serves is subject to facilities-based competition from several

separate carriers. This is not, and cannot, be the rational test. Instead, the FCC should apply its own well-grounded analysis and find that, upon repeal of the Bush Policy, Alascom lacks market power in the CCS service, consistent with the Commission's findings from 1995 and 1997 that Alascom lacks market power for all other services and areas.

A. Competition in the Alaskan Bush.

RCA contends that Alascom can exert market power for carrier-to-carrier and private line services in those areas where Alascom has a facilities monopoly. First, the RCA disregards the fact that the FCC's "Bush Policy" which restricts satellite earth station deployment applies only to switched services and not to private line services. Second, the RCA ignores that (1) the FCC and RCA several years ago permitted GCI access to a substantial majority of the Bush telecommunications business through a "waiver"[2] and (2) Alascom has urged the Commission to repeal the Bush facilities monopoly, the so-called "Bush Policy,"[3] which would end immediately the single basis for the RCA's claim that Alascom has "market power" in those areas where it

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[2] GCI has advocated repeal of the Bush Policy in the instant proceeding (Opposition of General Communication, Inc., p. 20) and for many years prior to it. *See* Petition of General Communication, Inc. for a Partial Waiver of the Bush Earth Station Policy, File No. 122-SAT-WAIV-95. The Commission granted GCI's request for waiver and authorized it to serve approximately 50 Bush communities. *Memorandum Opinion and Order*, 11 FCC Rcd 2535 (1996). As shown in the Petition (p. 11), GCI now has facilities-based access to approximately 74% of all interstate traffic originating from Bush satellite earth stations and 63% of all intrastate traffic originating from Bush earth stations. The RCA granted a similar waiver in APUC, U-95-38, Order No. 10 (1996).

[3] Under the historical "Bush Policy," the Commission has prohibited the construction of satellite earth stations to serve Alaskan Bush communities in competition with Alascom's provision of switched telecommunications services since the 1970s. *See* Petition, p. 11.

has a facilities monopoly. Indeed, FCC repeal of the Bush policy already is tardy. The RCA itself repealed the state version of that facilities monopoly many months ago[4] and it supports FCC repeal of the federal version. (Comments, p. 8) Corresponding repeal of the Bush policy by the FCC removes the only purported basis for considering Alascom to have market power.

Five years ago, the FCC and RCA authorized GCI to construct competitive earth stations to compete in 56 Bush communities. The 56 Bush locations where GCI now provides facilities-based competition represent approximately 74% of all interstate traffic originating from satellite earth stations in the Bush and 63% of all satellite-served Bush intrastate-originating traffic. (Petition, p. 11) It is unchallenged as a factual matter by the RCA that GCI now competes for a substantial majority of all Bush switched services, giving it facilities-based access to approximately 95% of all Alaskan access lines. Granting the GCI and Alascom requests to repeal the Bush Policy clears the way for 100% access to all Alaskan telecommunications customers for GCI and all other interested carriers.

The decisions by the RCA and the FCC to permit GCI to serve the 56 Bush communities effectively broke the Bush Policy. It is now time to sweep away the final remains of it.

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[4] *Order Lifting the Restriction on Construction of Interexchange Facilities in Rural Areas,* RCA Docket R-98-1 (November 20, 2000).

B. Competition for Private Line Services.

Contrary to any suggestions by the RCA (Comments, pp. 2-3), Alascom is subject to substantial competition in Alaska in the provision of private line services. Other carriers have been free to compete for private line business in Alaska, including in the Bush, for at least ten years.[5] GCI is a major player in this arena,[6] along with other competitors.

Schools and libraries under the E-Rate program are among the largest users of private lines services in the Bush, and substantial users in Alaska as a whole. The Universal Service Administrative Company ("USAC") reports that Alaska schools and libraries enjoy an "E-Rate" funding commitment of $12,536,879.[7] Of that amount, Alascom's share is only $2,393,386, or less than 19.1%. More than 80% of that private line market segment is served by carriers other than Alascom.[8] E-Rate users are the "anchor tenants" of Bush private lines services. While Alascom is without accurate information for Alaskan private line services overall, it is clear that this 19% share

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[5] At a minimum, unfettered competition for private lines services has been the norm since the State initially permitted competitive entry in 1991. Interstate private line competition long predates 1991 because the FCC has not applied the Bush Policy to private line services.

[6] On June 29, 2001, GCI announced its plans to provide high speed internet service to 152 Alaskan communities, most of them Bush locations. *See* www.gci.com

[7] This total Year 3 funding dollar amount of $12,536, 879 was obtained from the USAC website: http://www.sl.universalservice.org/funding/y3/data/aky3.asp

[8] GCI offers the following representation about its "SchoolAccess program: "Today, more than 70,000 rural Alaska students are connected to the Internet with SchoolAccess. GCI provides e-mail service, a custom user interface, a help desk, onsite training and website hosting for more than 155 of the state's rural schools, and another 85 schools in urban areas." *See* www.gci.com

establishes Alascom as a small player in this important Bush private line service segment.

Similarly, USAC reports that total annual Alaska support for rural health care is $4,684,909 of which Alascom's share is $559,613.[9] Alascom's share of rural heath care support is less than 12%.

In any event, more than seventeen years ago, the Commission found domestic satellite carriers to be non-dominant[10] and it decided that private line services are part of same national telecommunications product market as switched interexchange services and in which all AT&T and Alascom services are non-dominant (other than Alascom's CCS).[11] Those sound decisions are not before the Commission in this proceeding and private line services are not offered under Tariff No. 11, the only interstate "dominant" offering of Alascom.

C. Competition for Switched Services.

The record before the Commission overwhelmingly supports the conclusion that Alascom lacks market power for switched services, as well. In its Petition, Alascom estimated its share of the Alaska telecommunications market to be approximately 54% for interstate switched services. (*See* Petition, pp. 5-9 and Attachment A) Essentially, that was a comparison

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[9] *Supra*, p. 7 note 7.

[10] *Policy and Rules Concerning Rates for Competitive Common Carrier Services*, 95 FCC 2d 554, 557 (1983).

[11] *Id.* at 557-558.

between the market shares of Alascom and GCI, the carriers for which reliable traffic data are available. Today, Alaska has numerous substantial competitors and competing facilities in addition to Alascom and GCI. (*See* Petition, pp. 8-13) The RCA's Comments neither grasp, nor credibly refute, these established facts.

Even if GCI and Alascom were the only carriers serving Alaska, a hypothetical which is entirely untrue, Alascom cannot and does not exercise market power. The RCA suggests that:

> Many argued that Alascom and its main competitor, GCI Communications, Inc., functioned as a duopoly in the market. We note that for Message Telephone Services, these two carriers retain over 80% of the Alaska market. (Comments, p. 3)

The RCA's unsupported argument cannot be accepted as fact. Even so, this RCA contention buttresses Alascom's request for reduced regulation.

As demonstrated in the Petition, Alascom's share of the interstate market has dropped dramatically, to around 50%, marked by substantial declines in traffic. GCI's share has grown to approximate a level similar to that of Alascom, with corresponding growth in traffic. Those facts are unchallenged.

The RCA now tells us that approximately 20% of all traffic is carried by other providers. If the RCA is correct, then both Alascom and GCI have market shares of about 40% each. Obviously, Alascom does not remotely control a market share which would permit it to exercise "market power."

Hypothetically, if Alascom decided to "exercise market power," as the RCA suggests it could, then it would raise rates, intending to extract "monopoly rents" from a "captive customer base."[12] Upon doing so, customers would flee to GCI and other carriers and Alascom's remaining share of the market would drain away rapidly. Alaskan consumers have substantial other choices, in the form of GCI and the other carriers which already represent the 20% of the market noted by the RCA.

Market forces drive intrastate rates in Alaska, not "market power." Today, Alaska access charges approximate $0.13 per minute. Alascom's intrastate average rates have dropped from $0.32 to $0.19 per minute. In fact, Alascom offers intrastate rate plans with rates as low as $0.14 per minute. The margins offered under these existing plans prove that Alascom cannot exert market power and raise rates. Competition prevents it.

Similarly, Alascom will have no ability to exercise "market power" within the CCS service. First, as noted above, AT&T itself accounts for 97% of all CCS traffic. Nonetheless, to protect other carriers who purchase a *de minimis* portion of CCS service, as part of the reduced regulation proposed in the Petition, Alascom would cap CCS rates, and thus would be prohibited from raising them from the time the Commission grants the relief requested.

[12] Of course this is a false hypothetical. The rate integration policy codified in the Communications Act prohibits any such increase in interstate rates charged to Alaskan consumers. Alascom is legally required to charge customers the same interstate rates in Alaska as AT&T charges nationwide for services subject to rate averaging. *Infra*, pp. 20-21.

The CCS service would be replaced by alternative, and more efficient, services over the course of two years, and then would be terminated.

Alascom has no control over telecommunications facilities serving Alaska which it could use to "exercise market power." Alascom now owns only about 10% of the fiber optic capacity between Alaska and the lower 48 states.[13] Other carriers control the other 90% of such capacity, for example, Alaska United and WCI Cable, Inc. (Petition, pp. 9-10) Substantial in-state fiber optic capacity also has been deployed by providers other than Alascom, such as Alaska Fiber Star and KANAS.[14] (*Ibid.*)

The RCA baselessly questions the availability of satellite capacity to serve Alaska. The RCA cannot dispute that GCI offers statewide satellite coverage and substantial satellite capacity other than that of GCI and Alascom offer significant coverage of Alaska, including the five domestic satellites noted in the Petition. (Petition, pp. 11-12) Moreover, through its *DISCO* proceedings, the Commission has been liberalizing access to the U.S. market through foreign-owned satellites. For example, the Commission has cleared the Canadian ANIK E1 (111.1° W.L.), ANIK E2 (107.3° W.L.)[15] and

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[13] This a marked change in the market. As recently as three years ago, Alascom owned approximately 90% of the only fiber optic cable between Alaska and the lower 48 states. Today, there are three separate fiber optic systems interconnecting Alaska with the rest of the world, with Alascom owning about 10% of the total capacity. *See* Petition, pp. 9-10.

[14] In late August, 2001, WCI Cable and its subsidiaries, including Alaska Fiber Star, sought protection from their creditors under the United States Bankruptcy Code. 11 USC § 101 *et seq.* The WCI fiber optic systems remain in place and in operation.

[15] *Telesat Canada (Petition for Declaratory Ruling)*, 15 FCC Rcd 3649 (1999).

ANIK F1 (107.3° W.L.)[16] satellites, and the Mexican Solidaridad 2 (113° W.L.) and SatMex 5 (116.8° W.L.)[17] satellites to serve the United States market. Those satellites would provide coverage of some or most of Alaska, representing a total of at least ten satellites which may provide service to Alaska in addition to the services of GCI and Alascom.

III. FCC PRECEDENT SUPPORTS THE REQUESTED REGULATORY RELIEF.

The Commission's well-established precedent holds that a carrier will be considered to have market power, *i.e.* be classified as "dominant," if it is able to control market prices. Despite the RCA's apparent desire to see numerous competitors present at every Bush village, there should be no doubt that Alascom would be without the ability to control rates for service to the Bush upon grant of the relevant relief requested, that being repeal of the Bush Policy and capping of CCS rates. The Commission's precedent developed in establishing competition requires the reduced regulation requested.

A. More than Five Years Ago the FCC Determined that Alascom Lacks Market Power For Services Other Than CCS.

In 1995, the FCC reclassified AT&T and Alascom as non-dominant carriers, based upon the express determination that both of them were

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[16] *Telesat Canada (Petition for Declaratory Ruling for Inclusion of ANIK F1 on the Permitted Space Station List)*, DA 00-2835 (December 19, 2000).

[17] *Satelites Mexicanos, S.A. C.V. (Petition for Declaratory Ruling)*, 15 FCC Rcd 19311 (2000).

unable to exercise market power in the domestic interexchange telecommunications market.[18] In an express response on reconsideration, the FCC stated:

> AT&T/Alascom [is] within the scope of the classification of AT&T as non-dominant in the provision of interstate, domestic interexchange services.[19]

The next year, AT&T and Alascom were declared non-dominant in international telecommunications.[20] These determinations of non-dominance apply to all AT&T and Alascom interstate services other than CCS.[21]

The RCA's contentions that Alascom has the ability to exercise market power must be dismissed as contrary to these long-standing determinations. With respect to CCS service, as shown above (at pp. 5-12), substantially changed market conditions preclude Alascom from exercising market power, particularly with the urged repeal of the Bush policy.

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[18] *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271 (1995) ("*AT&T Reclassification Order*").

[19] *Order on Reconsideration, Order Denying Petition for Rulemaking, Second Order on Reconsideration*, 12 FCC Rcd 20787 (1997). As noted above, the Commission considers private line services to be part of the national telecommunications product market in which AT&T and Alascom have been classified as non-dominant.

[20] *Motion of AT&T Corp. to be Declared Non-Dominant for International Service*, 11 FCC Rcd 17963 (1996).

[21] *See AT&T Reclassification Order, supra.; Order on Reconsideration, Order Denying Petition for Rulemaking, Second Order on Reconsideration. supra.; Motion of AT&T Corp. to be Declared Non-Dominant for International Service, supra.*

B. The FCC Must Reject the RCA's Views as Contradictory of Well-Established Precedent and Analysis.

Competitive analysis established by the FCC demonstrates that reduced regulation of Alascom is overdue.

1. Deregulation Nationally.

The FCC did not examine the presence or absence of direct, interexchange carrier owned, facilities in rural areas. Certainly in the 1980s, and in all likelihood today, there are hundreds of rural communities in the lower 48 states that are not directly served by the facilities of two or more interexchange carries. Nonetheless, the Commission has found competition to be sufficient to permit AT&T and Alascom to be considered non-dominant, to accomplish the elimination of interexchange tariffs,[22] and to permit carriers to negotiate their interconnection arrangements with little regulatory interference. The RCA would turn away from this well-founded view and substitute a new test, the actual existence of multiple facilities directly to all end offices, or perhaps, to all customers. This is contrary to the FCC's analysis, and as such, is unsupportable.

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[22] Alascom Tariff FCC No. 11 is the only remaining significant long-term domestic interexchange service tariff maintained by AT&T and Alascom because virtually all non-dominant interexchange services are subject to mandatory detariffing (exceptions include limited interexchange offerings such as AT&T's dial-around and LEC connect initial service). *See In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, 11 FCC Rcd 20,730 (1996); *on recon.* 12 FCC Rcd 15,014 (1997); *Second Order on Reconsideration and Erratum*, 14 FCC Rcd 6004 (1999); *aff'd MCI WorldCom, Inc., et al. v. FCC*, 209 F.3d 760 (D.C. Cir. 2000); *see also Memorandum Report and Order*, DA 00-2586 (CCB, rel. Nov. 17, 2000).

The Commission started its examination of the interstate telecommunications market, and its deregulation of it, more than twenty years ago in the Competitive Carrier proceeding.[23] During the course of that proceeding, the Commission established the term "dominant" carrier, one able to exercise market power, and "non-dominant" carrier, unable to exercise market power.[24] The Commission's analysis of market power evolved during the Competitive Carrier proceeding. Relying in part upon leading economists of the time, the Commission determined that market power was "the ability to raise and maintain prices above the competitive level without driving away so many customers as to make the increase unprofitable."[25] In addition, the Commission specifically found that "all interstate domestic, interexchange telecommunications services comprise a single relevant product market with no relevant submarkets,"[26] and that the United States as a whole was a single national relevant geographic market, which included Alaska, Hawaii, and the other offshore points.[27]

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[23] *See Policy and Rules Concerning Rates for Competitive Carrier Services*, 77 FCC 2d 308 (1979).

[24] *See First Report and Order*, 85 FCC 2d 1 (1980).

[25] *Policy and Rules Concerning Rates for Competitive Common Carrier Services*, 95 FCC Rcd 554, 558 (1983), *vacated on other grounds, AT&T v. FCC*, 978 F 2d 727 (DC Cir. 1992), *cert. denied, MCI Telecommunications Corp. v. AT&T*, 113 S. Ct. 3020 (1993).

[26] *Id.* at 563-564.

[27] *Id.* at 574-575.

More than ten years ago, the Commission initiated its Interexchange Competition proceeding,[28] in large measure looking toward reduced regulation of AT&T, which was still classified as a dominant carrier. In that proceeding, the Commission found that reduced regulation of AT&T was warranted.[29]

2. Reclassification of AT&T and Alascom.

With this legal background, the Commission commenced a proceeding in 1993 which resulted in the 1995 reclassification of AT&T and Alascom as non-dominant domestic carriers.[30] In the *AT&T Reclassification Order*, the Commission affirmed the market and market power definitions previously adopted, and noted above.[31] The Commission held:

> The Commission has never definitively concluded, either in its rules or in the Competitive Carrier orders, that a carrier must demonstrate that it lacks the ability to control the price of every service that it provides in the relevant market before the Commission can classify that carrier as non-dominant. Indeed, Section 61.3(o) of our regulations states only that a dominant carrier is defined as a "carrier found by the Commission to have market power (i.e., the power to control prices)." We believe, in light of the evidence in this case and the state of competition in today's interstate, domestic, interexchange telecommunications market, we should assess whether AT&T has market power by considering whether AT&T has the ability to control prices with respect to the overall relevant market.
>
> As our analysis below demonstrates, AT&T does not have the ability unilaterally to control prices in the overall interstate, domestic,

[28] *See Competition in the Interstate Interexchange Marketplace*, 5 FCC Rcd 2627 (1990).

[29] *See Competition in the Interstate Interexchange Marketplace (Report and Order)*, 6 FCC Rcd 5880 (1991).

[30] *See AT&T Reclassification Order.*

[31] *Id.* at 3286-3287.

> interexchange market. [note omitted] The record indicates that, to the extent AT&T has the ability to control prices at all, it is only with respect to specific service segments that are either de minimis to the overall interstate, domestic, interexchange market, or are exposed to increasing competition so as not to materially affect the overall market. As our Interexchange Competition orders and the evidence in this case indicate, most major segments of the interexchange market are subject to substantial competition today, and the vast majority of interexchange services and transactions are subject to substantial competition. Accordingly, we believe that assessing AT&T's market power by an "all-services" standard (i.e., requiring AT&T to establish that it lacks the ability to control price in all service segments), would result in a situation where the economic cost of regulation outweighs its public benefits.[32]

As shown by this market analysis, the FCC has rejected the RCA's view that the Bush service must be heavily regulated because it is a market segment with less competition than what prevails in the market as a whole. The FCC held years ago that competition does not have to be uniformly robust in all locations to establish lack of market power. It is beyond question that the existence of telecommunications competition in the United States has not been, and likely never will be, entirely uniform. Typically, in the lower 48 states dense urban areas are served by more competitors and competing facilities than are remote and sparsely populated rural areas. The same is true for Alaska. The FCC does not consider the simple existence of an uneven distribution of competitors to be a basis for maintaining burdensome regulation or the dominant classification.

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[32] *AT&T Reclassification Order*, pp. 3287-3288.

The record evidence is abundant that in the Alaska "market" [33] as a whole Alascom faces substantial, indeed overwhelming, competition. Such market-wide competition is the only necessary basis for the requested reduced regulation. That the relative levels of competition vary from one location to another is both expected and irrelevant to the Commission's analysis.

The Commission also views service competition as a whole, and has rejected a service-by-service approach. The Commission has held that even if a carrier may have the ability to control prices in specific service segments, it still lacks market power overall so long as those segments are either *de minimis* in comparison to the overall services market, or if those segments are exposed to increasing competition. As shown below, in the case of Alascom's provision of service to the Bush, both standards apply, and the Commission should apply the "all-services" standard to Alascom, rejecting the RCA's myopic examination of the Bush service alone.

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[33] It must be noted that the FCC repeatedly has included Alaska as part of the national market for the purpose of examining the spread of competition and has not considered Alaska to be a separate and distinct telecommunications market. *See Policy and Rules Concerning Rates for Competitive Common Carrier Services*, 95 FCC 2d 554, 563, 573-575 (1983)("...the United States (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and other offshore points) comprises the relevant geographic market for this product, with no relevant submarkets.") *See also Order on Reconsideration, Order Denying Petition for Rulemaking, Second Order on Reconsideration*, 12 FCC Rcd 20787, 2081 (1997) ("We reject the suggestion by GCI, MCI and Alaska, that, in order to reclassify AT&T/Alascom as a non-dominant carrier with respect to its provision of interstate, domestic, interexchange services, the Commission must assess AT&T/Alascom's market power in the Alaska market, rather than in the overall interstate, interexchange services market.")

As established without challenge in the Petition, CCS service under Tariff No. 11 is not a significant factor in Alaska telecommunications. AT&T traffic represents 83% of all Bush traffic carried under CCS and 97% of total CCS traffic, Bush and non-Bush combined. In other words, only 3% of total CCS traffic is attributable to competing carriers. (Petition, p. 21) Thus, the less competitive portion of the CCS service must be considered *de minimis.*

Similarly, as shown above, GCI and other carriers now have direct, facilities-based access to approximately 95% of all Alaskan access lines. The current scheme of disproportionate regulation, based upon the classification of approximately 5% of access lines when the other 95% are openly competitive, is inconsistent with the FCC competition analysis set out in the *AT&T Reclassification Order.*

The Alaskan Bush is exposed to competition, which should be expected to grow. GCI now directly serves more than 50 Bush locations served by satellite, representing about 74% of all originating interstate, and 63% of all originating intrastate, Bush traffic carried by satellite. (Petition, p. 11) With the elimination of the Bush Policy, there would be no special legal barrier to entry and competitive entry should increase.

Alascom would have no actual ability to raise rates and maintain the market share necessary to profit from increased rates. Alascom has promised to cap CCS rates as part of its regulatory reform proposal, which prevents rate increases. Even if Alascom managed to increase rates, those rates could

not be sustained because other carriers and service arrangements would be substitutable. GCI and other carriers would be free to serve Bush locations directly, at their own discretion, and enter into alternative arrangements separate from Alascom. Moreover, the codified rate integration policy flatly prohibits Alascom from targeting Bush customers with selective rate increases. Thus, every factor the FCC has used to decide that market power is lacking applies affirmatively to the AT&T and Alascom proposal.

In the *AT&T Reclassification Order*, the Commission explicitly found that AT&T, in 1995, had the ability to control the prices of 800 directory and analog private line services. The Commission reclassified AT&T without regard to those findings because of the relatively small size of those service segments compared to the whole and because AT&T committed for a three year period not to raise rates other than to reflect increases in the consumer price index.[34] In comparison to that decision, the proposed streamlining of Tariff No. 11 concerns a service of tiny competitive scope and one in which the rates would be capped, not just limited for three years.

3. Alascom Is Prohibited From Raising Rates at Will.

The Telecommunications Act of 1996 codified the Commission's rate integration policy in Section 254(g). 47 U.S.C. 254(g). By law, Alascom must charge its customers the same rates for interstate domestic services as those charged by its parent AT&T for all services subject to the rate averaging

[34] *AT&T Reclassification Order*, pp. 3326-3328.

requirements.[35] Obviously, this mandate covers all of Alascom's customers, in Bush and non-Bush locations. As with the issue of "market power," the RCA simply overlooks this statutory requirement (*see also* Petition, pp. 4-5) and the Commission's conclusion in 1997 that:

> ...even assuming arguendo that GCI's petition presents credible evidence suggesting a lack of competition with respect to domestic, interstate interexchange service in Alaska, GCI's petition fails to demonstrate that geographic rate averaging will not sufficiently mitigate the exercise of market power, if any, by AT&T/Alascom in Alaska.[36]

AT&T and Alascom's proposal also dealt with Tariff No. 11, the "carrier-to-carrier" service over which the RCA contends that Alascom exerts market power. (Comments, p. 3) AT&T and Alascom proposed immediate reduction of the regulation of Tariff No. 11 and a cap on its rates, preventing any future rate increases. (Petition, pp. 23-24) The capped Tariff No. 11 would remain in place for a two-year monitoring period, at the end of which, it could be terminated, subject to successful provision of alternative services by AT&T and Alascom to the small amount of non-AT&T traffic carried via CCS today. The Commission and all interested parties, including the RCA, would be able to monitor the provision of carrier-to-carrier services to Bush locations and the roll-out of services more efficient than CCS.

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[35] *See also Policy and Rules Concerning the Interstate Interexchange Telecommunications Marketplace: Implementation of Section 254(g) of the Communications Act of 1934, as amended*, 11 FCC Rcd 9564, 9568-9571 (1996).

[36] *Order on Reconsideration, Order Denying Petition for Rulemaking, Second Order on Reconsideration*, 12 FCC Rcd 20787, 2083 (1997).

In a mystifying response, the RCA opposes simplification of the CCS ratemaking process and opposes a cap on CCS rates (Comments, pp. 6-7) due to a purported concern that Alascom would deter competition for the Bush and overcharge competitors if the FCC grants the proposed deregulation. The RCA does not explain how Alascom could overcharge when CCS rates would be capped at their current levels.

Eliminating the Tariff No. 11 ratemaking process based upon the Alascom Cost Allocation Plan could not have any harmful effect on carriers taking service under Tariff No. 11 because rates could not be increased. Moreover, with the repeal of the Bush Policy, competitors would be free to deploy their own facilities, use CCS or carry traffic to the Bush under other offerings, such as negotiated carrier agreements, UniPlan Service, AT&T Business Network Service, CustomNet Service and others.[37] The RCA and other interested parties would be free to seek delay of the termination of Tariff No. 11 at the end of two years if they had good grounds to do so.

The ultimate basis of all of the RCA's objections boils down to one concern, that Alascom is the only facilities-based interexchange carrier for certain Bush communities. The tail wags the dog because those communities represent about five percent of Alaskan access lines. It is on this basis alone that the RCA contends that Alascom has "market power," that it could

[37] *See* Reply of AT&T Corp. and Alascom, Inc., May 2, 2000.

improperly raise rates, and that maintenance of Tariff No. 11 without simplification or any possibility of end is necessary.

To the extent that the Bush Policy has prevented competitive facilities-based entry into the Bush, AT&T and Alascom have urged its elimination. The RCA and GCI agree. As to the availability of competing facilities in Bush locations, the FCC has not relied upon the actual, point-by-point deployment of interexchange carriers' facilities to determine the state of competition.[38] But this is the "standard" which the RCA expects.

In reducing telecommunications regulation, the Commission has examined the existence and strength of alternative carriers, the presence of competition in general, market shares, the presence of alternative facilities, and fundamentally, the legal ability of competitors to serve customers. In finding domestic interexchange carriers non-dominant generally in the 1980s, and finding AT&T and Alascom non-dominant for domestic services in 1995, the Commission did not conduct a survey of the presence or absence of interexchange facilities across vast rural stretches of the United States. The Commission does not prevent market-wide regulation reduction when warranted simply because small segments of a service may not be served by many competitors directly. Accordingly, AT&T and Alascom request that the Commission grant the reduced regulation requested in the Petition.

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[38] *See e.g. AT&T Reclassification Order*, pp. 3287-3288.

4. The RCA's Other Objections Are Equally Baseless.

Affiliate Transaction Rules. AT&T and Alascom proposed elimination of the requirement that they observe the affiliate transaction rules. (Petition, pp. 15-18) The RCA opposes this overdue form of decreased regulation on the grounds that AT&T and Alascom could perform anticompetitive "cost and asset transfers" and undermine the RCA's ability to regulate intrastate rates. (Comments, p. 4) These points are unfounded.

Section 254(g) of the Communications Act requires nationwide integrated interexchange customer rates among Alascom and AT&T for all services subject to rate averaging requirements. "Cost and asset transfers" cannot change these customer rates which must be the same for both carriers.[39]

The affiliate transaction rules are unnecessary to the regulatory oversight of the RCA. Alascom does not set its intrastate rates based upon separations-determined booked costs. As is true nationally, in Alaska, Alascom's intrastate rates are driven by market conditions, not traditional ratebase considerations. (*See* AT&T and Alascom Reply, pp. 15-16) The RCA's various concerns about "costs shifts" are not relevant.

One of the benefits of the proposed lessened regulation would be to allow AT&T to harmonize its operation of Alascom with its operations

[39] As AT&T has shown in other contexts, providing service to high-cost areas does, however, put pressure on AT&T's overall ability to operate as a nationwide carrier. *See*

elsewhere in the United States. In the other 49 states, AT&T provides intrastate service through its interexchange affiliates, *e.g.* AT&T Communications of California, Inc., with which it does not have to observe the conditions imposed on Alascom. At no point has the RCA explained why it would be unable to regulate when 49 other state regulatory bodies continue to perform their functions.

In any event, AT&T would maintain Alascom as an interexchange affiliate with a separate set of books sufficient for the RCA to perform its functions. This is the regulatory model AT&T observes in other states and there is no rational reason why it should not prevail in Alaska.

Consolidation of AT&T and Alascom. The RCA opposes the integration of Alascom into AT&T on the grounds that cost shifts, separations changes and confiscation liabilities could lead to increased rates to Alaskans. (Comments, p. 5) Such observations rest upon the same fallacies. Rate integration and competition preclude Alascom from raising customer rates.

Comments of AT&T Corp. in *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, filed August 21, 2001, p. 53.

IV. CONCLUSION

AT&T and Alascom request that the Commission complete this proceeding, accept the overwhelming weight of the record, and grant the modest regulatory relief which they have sought.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Judy Norris, a legal secretary in the firm of Holland & Knight LLP, hereby certify that on the 4th day of October, 2001, copies of the foregoing Opposition of AT&T and Alascom were deposited in the U.S. Mail, postage prepaid, to the following:

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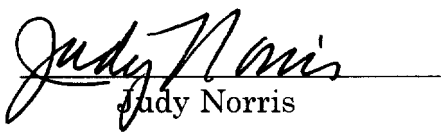

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